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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.669 OF 2005

Shantinath Raghu Hasure Appellant
versus
Sau.Prabhavati J. Patil & another Respondents

WITH
SECOND APPEAL NO.929 OF 2003

Shantinath Raghu Hasure Appellant
versus
Sau Prabhavati J. Patil & another Respondents

Shri A.A.Kumbhakoni for appellant.
Mr.Umesh Mankapure for respondent no.1.

CORAM : A.P.DESHPANDE, J.

DATE : 12TH JULY 2007

PC :

1. One Shantinath who is appellant in both the second appeals and Shridhar were real brothers. The suit property was purchased in the name of Shantinath and Shridhar vide registered sale deed dated 16th November 1967. Some time in the year 1981 Shridhar sold his share in the suit property in favour of respondent no.1 Prabhavatibai. In the year 1982 Shantinath, the appellant herein,

instituted a suit for declaration and injunction against his brother Shridhar, now deceased and Prabhavatibai. The declaration sought by the appellant was to the effect that the sale deed executed by Shridhar in favour of Prabhavatibai is null and void. A further declaration was sought that though the property was purchased under a registered sale deed dated 16th November 1967 in the joint name of Shantinath and Shridhar, the appellant was the exclusive owner of the property and name of Shridhar was entered only as a Benamidar.

2. The present respondent no.1 Prabhavatibai and the brother of the appellant Shridhar instituted a suit for partition and separate possession. The Trial Court partly decreed the suit filed by the present appellant bearing Suit No.8 of 1982 and declared that the plaintiff is the owner of the Northern one half portion of Gat No.214 and to that extent granted injunction, whereas, the suit filed by the respondent no.1 Prabhavatibai and Shridhar came to be decreed by granting one half portion from the Southern side to them out of Gat No.214 by partition and separate possession.

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3. Aggrieved by the common judgment and decree passed by the Trial Court, two appeals came to be filed by the present appellant Shantinath. Both the appeals came to be dismissed by the First Appellate Court and aggrieved thereby these two second appeals are filed. According to the appellant, his brother Shridhar was not like an ordinary human being as he was very short in height and hence the parents of the appellants were worried about his future and asked the appellant to purchase the property in the joint name. Whereas, according to Prabhavatibai (respondent no.1) and Shridhar, the property was purchased in the joint name as both had purchased the property i.e. the appellant and Shridhar and hence he has one half share in the property. In the submission of the learned counsel for the appellant, there are no pleadings that Shridhar had funds to purchase the suit property and thus both the Courts below have erred in holding that the property was jointly purchased. It has come in evidence of the appellant himself and considered rightly by the Courts below, that the appellant and his brother Shridhar were having agricultural lands being block nos.138 and 305 which lands were irrigated lands and the appellant and his brother were getting income

from the said properties. The appellant has further admitted that both the brothers were receiving income from the joint family properties viz. land block nos.138 and 305. After taking into consideration other documentary and oral evidence both the Courts have concurred in holding that the property purchased by the appellant and Shridhar was jointly purchased and hence both of them were having 50% share therein. It will not be out of place to point out that the suit property was purchased in the joint name by a registered sale deed in the year 1967 and the suit came tobe filed in the year 1982 i.e. after the sale of the share of Shridhar by him in favour of Prabhavatibai.

4. Perused the judgment and decree passed by the Courts below. No substantial question of law emerges for consideration in these appeals. Hence, Second appeals stand dismissed summarily.

5. In view of dismissal second appeals, Civil Application No.1426 of 2003 in Second Appeal No.929 of 2003 does not survive and stands dismissed as such.

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(A.P.DESHPANDE, J.)